

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

JENNIFER VIETOR,

Defendant.

DECISION AND ORDER

6:18-CR-06026 EAW

By Report and Recommendation dated November 3, 2017, United States Magistrate Judge Jonathan W. Feldman recommended that the defendant be found competent to stand trial. (Dkt. 33). At the time, the matter was not assigned to the undersigned or another district judge, but Judge Feldman issued his Report and Recommendation out of an abundance of caution because the Second Circuit has not addressed the authority of a magistrate judge to issue competency decisions with or without a referral order. (*Id.* at 3 n.1). Since the filing of the Report and Recommendation, the case was assigned to the undersigned, and the defendant entered a plea before Judge Feldman on a referral basis, which was adopted by this Court. (Dkt. 48). Sentencing is scheduled to go forward on June 25, 2018, at 4:00 PM. (Dkt. 46).


Pursuant to Fed. R. Crim. P. 59(b)(2) and 28 U.S.C. § 636(b)(1)(C), the parties had 14 days after being served a copy of the Report and Recommendation to file objections. No objections were filed.

The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. Fed. R. Crim. P. 59(b)(2) (“Failure to

object in accordance with this rule waives a party's right to review."); *see Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009) (to trigger the *de novo* review standard, objections to a report "must be specific and clearly aimed at particular findings in the magistrate judge's proposal").

Notwithstanding the lack of objections, the Court has conducted a careful review of the Report and Recommendation, and finds no reason to reject or modify the Report and Recommendation. Therefore, the Court accepts and adopts the Report and Recommendation (Dkt. 33), and finds the defendant competent to stand trial. Moreover, because the Report and Recommendation was issued prior to a referral order, this Court enters a referral order to Judge Feldman to resolve the issue of defendant's competency, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B), *nunc pro tunc*.

SO ORDERED.



ELIZABETH A. WOLFORD
United States District Judge

Dated: May 15, 2018
Rochester, New York